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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/082,515 | 02/25/2002 | Laura Jane Bailey | | 2997 |

7590 07/18/2006

Laura J. Bailey
176 Richland St
Asheville, NC 28806

| EXAMINER |
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PRINCE, FRED G

| ART UNIT | PAPER NUMBER |
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1724

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/082,515

Applicant(s)

BAILEY ET AL.

Examiner

Fred Prince

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 2-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I in the reply filed on July 6, 2006 is acknowledged. It is noted that applicant withdrew claims 2-4 and amended claims 8-10. As claims 5-10 are drawn to non-elected inventions (i.e., Groups II and III), they are withdrawn from further consideration by the examiner. The restriction requirement is hereby made **FINAL**.

Specification

2. The disclosure is objected to because of the following informalities: It appears that applicant has attempted to number the paragraphs in the specification with the numbers restarted under each heading. If applicant desires to number the paragraphs the numbers should be placed in brackets (e.g., [0001], [0002], etc.) to clearly indicate that they are not a part of the text of the paragraph and the numbers should be sequential and NOT be repeated in the specification. It is noted that applicant has repeated the paragraph numbers in each section which leads to confusion when determining where the amendments are to be entered. Accordingly, a substitute specification WITHOUT the claims is required pursuant to 37 CFR 1.125(a) because the paragraphs have been improperly numbered.

A substitute specification must not contain new matter. The substitute specification must be submitted with markings showing all the changes relative to the immediate prior version of the specification of record. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter

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must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. An accompanying clean version (without markings) and a statement that the substitute specification contains no new matter must also be supplied. Numbering the paragraphs of the specification of record is not considered a change that must be shown.

Appropriate correction is required.

3. The amendment filed November 10, 2003 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: that the overflow canal is "for irrigation" (paragraph 0001 under "Background of the Invention" and paragraphs 0001 and 0003 under "Detailed Description of the Invention").

Applicant is required to cancel the new matter in the reply to this Office Action.

4. The disclosure is objected to because of the following informalities: The amendment received by the Office on November 10, 2003 amends paragraph 0004 such that it is now incomplete since it starts in the middle of a sentence.

Appropriate correction is required.

5. The disclosure is objected to because of the following informalities: The "Brief Description of the Drawings" contains the reference numbers describing the drawings. The "Brief Description of the Drawings" should not contain the reference numbers

should merely point out, in the this case, the different views for each figure. The reference numbers should instead be listed under the "Detailed Description of the Invention"

Appropriate correction is required.

Claim Objections

6. Claim 1 is objected to because of the following informalities: "What we claim as our invention is:" should be removed from the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 102/103

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Griffith (US Pat No 2,892,545).

Griffith teaches an anaerobic digester (10) and an overflow canal (11) for effluent to flow into.

Regarding applicant's recitation that the apparatus is a "continuous flow psychrophilic anaerobic digester", it is submitted that the recitation is one of intended use that fails to

add structure to the instant apparatus. If it is applicant's position that the recitation somehow adds structure to the apparatus, it is submitted that the apparatus of Griffith is capable being used as a "continuous flow psychrophilic anaerobic digester".

10. Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Varani (US Pat No 4,208,279).

Varani teaches an anaerobic digester (14) and an overflow canal (46) for effluent to flow into.

Regarding applicant's recitation that the apparatus is a "continuous flow psychrophilic anaerobic digester", it is submitted that the recitation is one of intended use that fails to add structure to the instant apparatus. If it is applicant's position that the recitation somehow adds structure to the apparatus, it is submitted that the apparatus of Varani is capable being used as a "continuous flow psychrophilic anaerobic digester".

Conclusion


11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. References are cited of interest to show the state of art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Prince whose telephone number is (571) 272-1165. The examiner can normally be reached on Monday-Thursday, 6:30-4:00; alt. Fridays 6:30-3:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Fred Prince
Primary Examiner
Art Unit 1724

fgp
7/13/06